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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re: STANLEY ALLEN SANSTAD, Debtor.	CASE NO. 16-24882-C-7 D.C. NO FF-2 **CHAPTER 7 TRUSTEE'S OPPOSITION TO MOTION TO COMPEL TRUSTEE TO ABANDON REAL PROPERTY** DATE: January 24, 2017 TIME: 9:30 a.m. DEPT: C; CTRM: 35 Hon. Christopher M. Klein

Chapter 7 trustee, Douglas M. Whatley, ("the Trustee"), through his attorney, Law Office of Barry H. Spitzer ("Attorney"), opposes the Debtor's Motion to Compel Trustee to Abandon Real Property as the Trustee believes the real property at issue, commonly known as 5695 Snipes Boulevard, Orangevale, California 95662; APN 235-0055-007-0000 (hereinafter referred to as the "Subject Property") has significant equity for the estate over and above the claimed homestead exemption.

The Movant claims the Subject Property is only 50% owned by him and therefore only 50% of the fair market value of the Subject Property is property of the estate. It is the contention of the Trustee that the Debtor and his wife are trying to "game" the Bankruptcy Court and their creditors by each claiming only a 50% interest in the Subject Property. The Debtor conveniently did not disclose in his moving papers that his wife, Carole Lynn

Sanstad, filed her own bankruptcy on December 23, 2015, case number 15-29794-B-7. Ms. Sanstad's petition is virtually the same as Movant's petition, listing the same assets and liabilities, as well as utilizing the same attorneys. Interestingly, only the Subject Property is distinguished as being a 50% interest owned by the Debtor and 50% owned by Ms. Sanstad. All other property, such as vehicles and jewelry are not divided 50-50 between the Debtor and his wife. The Movant and his wife also file joint federal income tax returns.

The Movant also neglected to inform this Court that he and his wife filed a "Homestead Declaration - Spouses as Declared Owners" document with the Sacramento County Recorder on June 25, 2013.

FACTS

1. Debtor inherited the Subject Property, which was deeded to him alone via a deed recorded at the Sacramento County Recorder on May 2, 1985.

2. Debtor hand wrote a grant deed of the Subject Property from himself to himself and his wife, Carole Lynn Sanstad, which was titled, "Stanley Allen Sanstad and/or Carole Lynn Sanstad, husband and wife, as Joint Tenants" which was recorded at the Sacramento County Recorder on December 4, 1992. See Exhibit "A."

3. Debtor and his wife, Carole Lynn Sanstad, recorded a "Homestead Declaration - Spouses as Declared Owners" document with the Sacramento County Recorder on June 25, 2013. In the Homestead Declaration, they state they are filing this single homestead as husband and wife and that they are joint owners of the Subject Property. See Exhibit "B."

4. Debtor's his wife, Carole Lynn Sanstad, filed her own Chapter 7 bankruptcy on December 23, 2015, case number 15-29794-B-7. Ms. Sanstad's petition is virtually the same as Movant's petition, listing the same assets and liabilities, as well as the same attorneys. The Subject Property is distinguished as being a 50% interest owned by the Debtor and 50% owned by Ms. Sanstad. All other property, such as vehicles and jewelry are not divided 50-50 between the Debtor and his wife. Ms. Sanstad case was declared

a no-asset and she received discharge on April 8, 2016.

5. Debtor filed his Chapter 7 petition on July 26, 2016, shortly after Ms. Sanstad received her discharge. The Debtor claims in his moving papers that the current fair market value of the Subject Property is $243,000.00 and has asserted a $175,000.00 homestead exemption.

6. Debtor and his wife also file joint federal income tax returns. See Exhibit "C."

ARGUMENT

The Debtor acquired the Subject Property through an inheritance from his father, making it his sole and separate property, even though it was acquired during his marriage to Carole Lynn Sanstad. *See*, California Family Code section 770(a)(2). The Debtor then apparently attempted to change the title of the Subject Property from his sole and separate property with the grant deed recorded December 4, 1992, which was titled, "Stanley Allen Sanstad and/or Carole Lynn Sanstad, husband and wife, as Joint Tenants." The question is did this document satisfy the requirement to transmute the Subject Property from the Debtor's separate property and if so, what is the current state of the title of the Subject Property.

The California Supreme Court recently addressed this situation in *The Marriage of Valli* (2014) 58 Cal.4th 1396:

> Married persons may, through a transfer or an agreement, transmute—that is, change—the character of property from community to separate or from separate to community. (Fam.Code, § 850.) A transmutation of property, however, "is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." (Id., § 852, subd. (a).) To satisfy the requirement of an "express declaration," a writing signed by the adversely affected spouse must expressly state that the character or ownership of the property at issue is being changed. (*Estate of MacDonald* (1990) 51 Cal.3d 262, 272, 272 Cal.Rptr. 153, 794 P.2d 911.)

Id. at 1400.

This Court must determine if the grant deed recorded at the Sacramento County Recorder on December 4, 1992 satisfies the California Family Code section 852(a) of an express declaration. If it is found by this Court that the grant deed did not satisfy section

852(a), then the Subject Property is the Debtor's separate property. Here, the language used in the grant deed is anything but a model of clarity. It is contradictory in that it states first that the Subject Property is held by Debtor "and/or" Debtor's wife. Then it classifies Debtor and his wife as "husband and wife." Finally, the grant deed declares the Subject Property the be held as "Joint Tenants." The Trustee believes due to the ambiguity of the title of the Subject Property, it is still the Debtor's separate property or at a minimum, community property. The Trustee contends the bare statement in the grant deed does not amount to a valid transmutation as there is no "express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." Thus, despite the form of title taken, at a minimum the Debtor and his spouse hold the Subject Property as community property under California Family Code section 760 ("Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property"), and they took no steps to transmute that would satisfy the requirements of California Family Code section 852(a). Under *Valli,* California Evidence Code section 662 ("The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof") does not apply to change this. If this Court finds the Subject Property is in fact community property, then it is 100% property of this estate. Bankruptcy Code section 541(a) provides that the commencement of a case creates an estate comprised of (1) all legal or equitable interests of the debtor in property as of the commencement of the case, and (2) all interests of the debtor and the debtor's spouse in community property as of the commencement of the case. Of course, if this Court finds the Subject Property is still the Debtor's separate property, then the Subject Property is similarly 100% property of this estate.

The Debtor relies on *Hanf v. Summers* 332 F.3d 1240 (9th Cir. 2003) to argue the Debtor has only a 50% separate interest in the Subject Property. The facts here are completely different than in *Summers*. In *Summers*, the husband and wife acquired real property, along with their daughter, from a third party. *Summers* at 1242. The *Summers* Court found the transmutation requisites did not apply as a result.

> Our reading of California law leads to the conclusion that the transmutation requisites had no relevance to the conveyance in this case. There simply was no interspousal transaction requiring satisfaction of statutory formalities.... Applying California law, we conclude that a third party conveyed joint tenancy interests to Eugene and Ann Marie Summers, a transaction to which the transmutation statute does not apply. The third-party deed specifying the joint tenancy character of the property rebutted the community property presumption, and rendered California's transmutation statute inapplicable.

Id. at 1245.

Here, the Debtor recorded a grant deed of his separate property to himself and his wife. There is no third party on the grantor side of the equation and there is no third party, such as a child of the Debtor, on the grantee side of the equation. Therefore the analogy to the *Summers* decision is misplaced.

Recently, the conflict between the Ninth Circuit's *Summers* decision and the California Supreme Court's *Valli* decision was addressed in *In re Obedian*, 546 B.R. 409 (Bankr. C.D. Cal. 2016):

> "In resolving an issue of state law, a Ninth Circuit panel ordinarily should follow the holding of a prior panel on that issue. But if state courts subsequently disagreed with the prior panel, the later Ninth Circuit panel is not bound to follow the prior panel." 2 Goelz, Watts and Batalden, Rutter Group Practice Guide: Federal Ninth Circuit Civil Appellate Practice, ¶ 8:205.3 at 8–44, citing inter alia, *F.D.I.C. v. McSweeney*, 976 F.2d 532, 535–536 (9th Cir.1992). Moreover, in interpreting state law, the Ninth Circuit must follow the decisions of the state's highest court. 2 Goelz, Watts and Batalden, Rutter Group Practice Guide: Federal Ninth Circuit Civil Appellate Practice, ¶ 8:204 at 841, citing inter alia, *Johnson v. Fankell*, 520 U.S. 911, 916, 117 S.Ct. 1800, 138 L.Ed.2d 108 (1997) ("Neither this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the State.") and *Muniz v. United Parcel Service, Inc.*, 738 F.3d 214, 219 (9th Cir.2013), In *Muniz v. United Parcel Service, Inc.*, the Ninth Circuit stated that "[d]ecisions of the California Supreme Court, including reasoned dicta, are binding on us as to California law." 738 F.3d at 219.

Id. at 421.

The *Obedian* Court then went on to say,

> The California Supreme Court in *Valli* stated its express disagreement with the Ninth Circuit's reasoning in *Summers,* observing that *Summers,* in exempting a spousal purchase from a third party from the marital property

> transmutation requirements of California law, failed to reconcile the exemption in the property transmutation statutes with their legislative purposes, failed to find a basis for the exemption in the statute's language, and was inconsistent with three California Court of Appeals decisions that stated or held that the transmutation statutes applied to one spouse's purchases from a third party during marriage. *Id.* at 1405. As a result, the court determines that, at a minimum, the language in the California Supreme Court's opinion in *Valli* constitutes "reasoned" dicta. Therefore, under case precedent, such as *Muniz v. United Parcel Service, Inc.*, the court should follow the state's highest court in *Valli* in interpreting California law rather than *Summers*.

Id. at 421-422.

Here, as in *Obedian*, the *Valli* decision must be followed, as opposed to *Summers*. The *Valli* Court examined and gave recognition to the legislative history and purposes of the marital property transmutation statutes, which were to reduce excessive litigation, introduction of unreliable evidence, and incentives for perjury in marital dissolution proceedings involving disputes regarding the characterization of property. *Id.* at 1401 - 1402, 1405. The *Valli* court specifically observed:

> The Legislature adopted the statutory transmutation requirements in 1984 upon a recommendation of the California Law Revision Commission. (*Estate of Macdonald* (1990) 51 Cal.3d 262 at 268). In its report to the Legislature, the commission observed that under then existing law it was 'quite easy for spouses to transmute both real and personal property' because a transmutation could be proved by evidence of an oral agreement between the spouses or by 'implications from the conduct of the spouses.' *Id.* at p. 269, This 'rule of easy transmutation ... generated extensive litigation in dissolution proceedings' where it encouraged spouses 'to transform a passing comment into an "agreement" or even to commit perjury by manufacturing oral or implied transmutation.' (*Ibid.*) As this court as concluded, therefore, in adopting the statutory transmutation requirements the Legislature intended to "to remedy problems which arose when courts found transmutations on the basis of evidence the Legislature considered unreliable." (*Ibid.*; accord, *In re Marriage of Benson,* (2005) 36 Cal.4th 1096 at p. 1106 [the transmutation statute "blocks efforts to transmute marital property based on evidence—oral, behavioral, or documentary —that is easily manipulated or unreliable"].)

Id. at 1401.

CONCLUSION

The Trustee respectfully requests this Court deny the Debtor's Motion to Compel Abandonment of the Subject Property as there is significant equity in the Subject Property for the estate. As has been shown, the Subject Property is held by the Debtor as either his separate property or at a minimum as Community Property. In either case, the Subject

Property is 100% property of the bankruptcy estate. Since the Subject Property has at least $68,000.00 of equity over and above the $175,000.00 homestead exemption claimed by the Debtor.

Taking the totality of circumstances, it is not logical that the Debtor would have taken his separate property interest in the Subject Property and transmuted it to be 50% separate property of his wife. No other property held by the Debtor and his wife, including automobiles and jewelry are held as anything but community property. There is a reason the legislature required in writing by an express declaration by the Debtor stating he wished to transform his separate property into anything different. One reason was to prevent parties stating an intent years later when it suits their needs. Here, no such writing has been produced. The Debtor and his spouse filed separate bankruptcy petitions for no other purpose but to dupe this Court and their creditors into thinking the Subject Property did not have equity over and above the homestead exemption. This is not accurate and must not be allowed to occur.

DATED: January 10, 2017

LAW OFFICE OF BARRY H. SPITZER

By: [signature]

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